

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:14-CV-713-BR

WEAVER COOKE CONSTRUCTION, LLC,
Appellant,

v.

GOURAS, INC.,
Appellee.

ORDER

This matter is before the court on Weaver Cooke Construction, LLC's ("Weaver Cooke") appeal from the 26 September 2014 order of United States Bankruptcy Judge Stephani W. Humrickhouse. In that order, the bankruptcy court granted summary judgment in favor of appellee Gouras, Inc. ("Gouras") on Weaver Cooke's contractual indemnity claim. In another appeal from the same underlying proceeding, the identical indemnification provisions were at issue, and this court held that, among other things, neither N.C. Gen. Stat. § 22B-1 nor the contributing negligence of other parties precluded Weaver Cooke's indemnification claim against the subcontractor. See Weaver Cooke Constr., LLC v. Stock Bldg. Supply, LLC, No. 5:14-CV-537-BR, DE # 53 (E.D.N.C. Aug. 12, 2016). The parties here have raised similar arguments to those raised in the earlier appeal, and the issues are ones of law.¹ Accordingly, for the reasons set forth in the Stock Building Supply case, the 26 September 2014 order of the

¹ Gouras alternatively argues that, even if the primary indemnification provision in its subcontract with Weaver Cooke is valid, Weaver Cooke still is not "entitled to indemnification from Gouras because Weaver Cooke has offered no evidence that the installation of [materials] by Gouras and/or its subcontractors proximately caused water intrusion into the buildings at the Project." (DE # 36, at 19.) This argument does not appear to have been raised before the bankruptcy court, and the court will not consider it now.

bankruptcy court is AFFIRMED IN PART, REVERSED IN PART, and REMANDED for further proceedings.

This 15 August 2016.

A handwritten signature in dark ink, appearing to read "W. Earl Britt", is positioned above a horizontal line.

W. Earl Britt

Senior U.S. District Judge